and as regards the second point, in view of the fact that the goods were in fact carried with the passenger as luggage, I consider the charge of demurrage could properly have been made, and in view of the judgment of Murray-Aynsley J. in *Public Prosecutor v. Abdul Wahab*[3] with which I agree, and which states *inter alia:* "I am of opinion that when money is given to any person in his official capacity, whether he has any right to take it or not, he is entrusted with it within the meaning of the section" (Section 406 Penal Code), the only possible difference had I agreed with his submission would be to alter the conviction to one under Section 406 Penal Code.

The discrepancies pointed out by Mr. Rajendra were only minor ones and do not go to the root of the charge and do not in any way affect the case. I therefore consider that the appeal from the conviction must be dismissed.

As regards sentence, Mr. Rajendra pleaded that the Appellant was of good character, young, and came from a good home. Of course he did, otherwise he would not have been placed in a position of trust, i.e. of parcels clerk in the Railways receiving money from the public. He further said the amount was only a small amount.

The Appellant had ample opportunity of putting forward an explanation as to how the excess 50 cents came to be in his drawer. However, he did not do so but in the face of the money having been found in his drawer preferred to brazen out a complete denial of the charge. A public servant who is in a position of receiving money direct from the public must be above suspicion. He is put there because of his integrity, and if he fails in his duty he must be severely punished. I see no reason in this case for altering the sentence of the learned District Judge. The appeal against sentence therefore is also dismissed.

Appeal Dismissed.

NG TAI HOE AND 9 ORS. v. YAU WAH FONG AND ANOR.

[App. Civil Juris. (Pretheroe, Ag. C.J., M.F., Murray-Aynsley, C.J., S., Russell, J.) June 5, 1948]

[Ipoh — Civil Appeal Nos. 9 & 10 of 1947]

Japanese Judgments and Civil Proceedings Ordinance, 1946, s. 3 — Power of Court to set aside a judgment of an inferior Court and the circumstances in which such power can be exercised — Courts Enactment (Cap. 2) s. 25.

The ten appellants in this appeal together with the Respondent, who is also the Appellant in Civil Appeal No. 9 of 1947, were the defendants in Civil Suit No. 63 of 2603 being sued therein for a declaration to set aside the sale of certain land. The Japanese Judge dismissed the claim of the applicant-respondent. On the 6th of February, 1947, the applicant-respondent commenced proceedings by way of motion before the Court of a Judge asking for leave to appeal against the decree of the Japanese Court. After filing the motion the applicant-respondent gave notice to the appellants of an amendment by which he sought to have the decree set aside. That notice was accepted and the motion came before the learned Judge on that basis, the motion being made under section 3 of the Japanese Judgments and Civil Proceedings Ordinance 1946 on four grounds: (1) that the Japanese Judge incorrectly recorded the issues or that he omitted all reference to collusion and fraud; (2) that there were no written grounds of Judgment and that therefore it was difficult to know what the Japanese Judge really decided; (3) that the applicant-respondent's principal witness made a mistake in his evidence; and (4) that the appellants had failed to register their transfer to Khong Hoong the 2nd respondent and that this fresh evidence tended to prove fraud. The learned Judge set aside the Japanese decree solely upon the second ground without going into the merits of the case heard by the Japanese Judge and from this decision the appellants appealed.

Held, (1) that an application under the Japanese Judgments and Civil Proceedings Ordinance 1946 to set aside a decree must be based on one of the grounds set out in sub-section 4 and if that ground is established, the Court may make any order as in the circumstances of the case may seem just; (2) that the fact that an issue which could have been raised at the trial was not in fact raised is no ground for setting aside a judgment; (3) that a judgment may be oral and as it did not appear that the plaintiff was prejudiced by the absence of written grounds of judgment the learned Judge was wrong in setting aside the judgment on that ground; (4) that in the circumstances, to grant leave to appeal would in any case be a waste of time and money and would be asking the Appellate Tribunal to attempt the impossible.

Cases referred to:—

(1) *Low Say Peng v. Teruvengadam,* 5 F.M.S. L.R. 29.

(2) *Murugappa Chetty v. Seenivasagam and others,* (1936) F.M.S.L.R. 33.

(3) *Robins v. National Trust Company,* (1927) A.C. 515.

(4) *Gem Milling Co. v. Robinson,* 3 T.L.R. p. 71.

(5) *Tan Ah Boon v. The State of Johore,* (1936) M.L.J. p. 187.

CIVIL APPEAL.

Appeal from the decision of Evans J. reported in (1948) M.L.J. 8.

Dato Roland Braddell (*H. T. Ong* with him) for the Appellants.

E. D. Shearn (*F. J. Bryant* with him) for 1st Respondent.

D. K. Walters (*Tan Cheng Hock* with him) for the 2nd Respondent.

Pretheroe, Ag. C. J. : —Early in the year 1942 one Yau Wah Fong (hereinafter referred to as the "vendor") was the registered owner of two areas of land under rubber cultivation situate in the State of Perak. Those two areas, together with certain other properties owned by the vendor, were subject to a charge in favour of the Overseas Chinese Banking Corporation Limited and, on the 29th of May, 1942, the amount outstanding and due to the said Corporation was slightly in excess of $17,850. On that day the vendor executed a certain agreement with ten other persons (hereinafter referred to as the "purchasers"). For present purposes, the relevant parts of that agreement provided that the vendor would sell one of his areas of rubber land to the purchasers and would procure the discharge of the charge against that area as soon as the branch of the Overseas Chinese Banking Corporation Limited re-opened at Ipoh. As a guarantee of good faith regarding the discharge of the charge the vendor transferred to the purchasers his second area of rubber land subject to an undertaking given by the purchasers that, as soon as the charge had been discharged, they would re-transfer the said second area to the vendor. It was further agreed that if the vendor failed to discharge the charge within two months of the opening of the Ipoh branch of the said Corporation the purchasers would be at liberty to sell the second area at a reasonable price, pay off the proceeds of the sale, and pay the balance of the sale price to the vendor. On, or about, the 13th July, 1943, the purchasers informed the vendor that they had duly exercised their right of sale and had sold the second area to Khong Hoong (hereinafter referred to as the "second purchaser"). The consideration for the sale was $37,647.25. On the 8th of October, 1943, the vendor instituted a joint action against the purchasers and second purchaser. The plaint included a number of claims the most important of which were that the sale should be set aside and that an injunction be granted restraining the purchasers from registering the transfer of this land from the purchasers to the second purchaser. Paragraph 7 of the plaint alleged that the purchase price was inadequate; that the area could have been sold at a higher price; that no notice of the sale was given to the vendor and, finally, that the sale was not made in good faith.

The case came up for hearing on the 21st December, 1943, before a Japanese Court and continued for three days. The Judge who heard the case was an advocate and solicitor who had been duly enrolled before the Japanese occupied Malaya and who had been appointed to that office by the Japanese authorities after the occupation. At the hearing all parties were represented by advocates and solicitors who had also been duly enrolled as such prior to the Japanese invasion. On the 12th of January, 1944, the Court pronounced judgment dismissing the suit. Thereupon the vendor attempted to file a petition of appeal but was informed by the Assistant Registrar in a letter dated the 27th of January, 1944, that he had submitted the application to the Chief of the Department of Justice, Perak, who had decided that "the registration of a Notice of Appeal against the decision of a Judge of this Court will not be allowed". Matters remained in this state until, some time after the liberation of Malaya, the Japanese Judgments and Civil Proceedings Ordinance, 1946 (hereinafter referred to as "the Ordinance") was enacted. Then the vendor, exercising his right under section 3 of the Ordinance, moved the High Court at Ipoh for leave to appeal against the decision of the Japanese Court. As I understand the record, this motion would not have been opposed but, before the motion came before the Court, the application was amended and an order setting aside the Japanese decree was prayed. After hearing arguments the learned Judge, on the 26th of July, 1947, ordered the decree of the Japanese Court to be set aside. Thereupon two appeals were lodged in this Court against the order of the learned Judge. In the first (Civil Appeal No. 9 of 1947) the second purchaser of this area is the appellant and the ten purchasers and the vendor respectively are the respondents, while in the second appeal (Civil Appeal No. 10 of 1947) the ten purchasers are the appellants and the vendor and the second purchaser are the respondents.

When these appeals came up for hearing before this Court on the 23rd of March, 1948, by agreement of all parties they were consolidated and heard together. It is for this reason that I have avoided the use of the words "appellants" and "respondents", and I propose to continue to do so until the final paragraph in this judgment.

Before proceeding to consider the principles to be applied in the case of applications made under section 3 of the Ordinance I will refer to one submission made at the appeal. It was submitted, and disputed, that the *ejusdem generis* doctrine must be applied when construing paragraph (d) of sub-section (4) of section 3 of the Ordinance. I do not agree for the reason that I do not consider that the grounds set out in paragraphs (a), (b) and (c) of the sub-section can

be regarded as forming a category which is essential to make the application of the doctrine possible.

Both at the hearing of the application and on appeal there was much argument regarding the power of the Court to set aside a judgment of an inferior Court and the circumstances in which such power can be exercised. Most of the cases cited had reference to applications made under the Rules of the Supreme Court of England where different considerations are applicable. As I understand it, any application made under section 3 of the Ordinance must be within the four corners of that section. Now what are the powers of the Court under the section? The correct interpretation may not be free from doubt, but I read it as follows. Sub-section (2) provides that, *subject to the provisions of this section,* the Court may make such order as in the circumstances of the case, may be just. Now this qualification, "subject to the provisions of this section", clearly refers to sub-sections (3) and (4). As sub-section (3) has no application to this appeal I will make no further reference to it. Sub-section (4) sets out the grounds upon which a decree may be set aside, so that the combined effect of sub-sections (2) and (4) is that any application to set aside a decree (but *not* for liberty to appeal) must be based on one of the grounds set out in sub-section (4) and, if that ground is established, the Court may make such order as, in the circumstances of the case, may seem to be just.

The judgment of the learned Judge who heard the application is concerned almost entirely with the consideration of which form of relief he should grant: there is no mention of any reason why any relief at all should be granted. The motion, which prayed leave to appeal and apparently was not substituted or amended when the prayer was altered to one to set aside the decree, set forth two grounds in support of the application. Those two grounds might be adequate to support an application for leave to appeal, but they certainly form no foundation for an order to set aside the decree. In face of this dilemma the learned Judge who heard the application treated the facts attested in the supplementary affidavit dated 30th March, 1947, as being the grounds upon which the applicant relied. I will now adopt the same course.

The first ground was that three issues were submitted for trial by counsel for the plaintiff but that only one was in fact considered by the Court. This statement depends upon an affidavit affirmed by the counsel who represented the plaintiff at the trial, but is disputed by another counsel who also appeared at the trial, who stated in Court that two of the issues were abandoned. Apart from the fact that the recollection of one counsel is at variance with that of another counsel and is also in direct conflict with the record it must be observed that the issues are not necessarily those "put forward" by counsel but are fixed at the discretion of the Court. I see no reason to doubt that the record itself, which was very carefully kept, accurately sets out the decision of the Judge in the matter. I therefore reject this ground.

The second ground states that an important witness made a mistake in his evidence regarding his evidence regarding his estimate of the value of the land. This indicates that he is an unreliable witness, but there is so much evidence regarding the value of the land, other than that of the witness concerned, that it is very doubtful if, had he given different evidence, it would have altered the decision. If decrees were to be set aside on this ground there would be no end to litigation and, in any case, it is not, in my opinion, a "sufficient" reason for the purposes of sub-section (4) of Section 3 of the Ordinance.

The third ground states that additional evidence has come to light since the trial viz: the second sale of the land was not registered. This fact was known to the plaintiff at the time of the trial and, as counsel on the other side pointed out, there were good and valid reasons why it was not registered. For these reasons I do not consider this as a ground for setting aside any judgment, much less for so doing under the Ordinance.

The last ground is that there is no written judgment and no written grounds of judgment, and further that there is no possibility of obtaining the latter. Counsel stressed this ground with great force and much ingenuity and cited in support *Low Say Peng v. Teruvengadam*[1]. In that case there were other reasons for ordering a new trial besides the absence of a written judgment but I am prepared to agree with counsel that this would be a sufficient ground to warrant setting aside a decree under the Ordinance in a proper case. But now, under the provisions of sub-section (2) I have to consider if, in the circumstances of this particular case, it would be just to set the decree aside. The case was heard with great care by a Judge who is an advocate and solicitor of this Court. All parties were represented by advocates and solicitors of this Court and the procedure followed was that of our Courts. A considerable number of witnesses gave evidence on behalf of each

side and their evidence is recorded in great detail. Having considered that evidence carefully I am satisfied that the decision was justified. Finally, after a lapse of 4½ years, it is quite impossible to put the parties back in the position they occupied before the hearing of the case. Thus, in the circumstances of this case, I do not consider it would be just to set aside the decree.

Up to this stage I have only considered this application as it was put before the lower Court. When arguing the appeal Mr. Shearn advanced two new reasons in support of the vendor's case. Firstly, he submitted that on the true interpretation of the agreement dated the 29th May, 1942, the purchasers became non-statutory mortgagees of the second area of land, and in support of this proposition cited *Murugappa Chetty v. Seenivasagam and others*[2]. But there is no mention of this in the pleadings which are based entirely on contract. At the trial this possible relationship between the parties was not referred to until the final address where Mr. Chabra said :—

> "The cumulative effect of this transaction between plaintiff and defendants 1 to 10 was to constitute defendants 1 to 10 as trustees in respect of the land."

It was clearly too late at that stage to raise a completely new issue and Mr. Shearn's submission amounts to a request that the decree should be set aside because an issue which could have been raised at the trial was not in fact raised. This, in my opinion, is no ground for setting aside a judgment.

Mr. Shearn next submitted that the selling price was so utterly inadequate as to be fraudulent. This matter was considered in detail at the trial, and the trial Judge had a considerable amount of evidence before him on the point. Bearing in mind the confused conditions obtaining at the time and also that the rubber trees sold with the land were between thirty and forty years old, the evidence does not convince me that the price was inadequate let alone fraudulent. There would have been little room for argument on this point had it not been for the affidavit affirmed over three years after the event by the witness Perkins. I cannot see how that document can possibly be evidence which can be considered by this Court and, even if it was, it would only suggest to me that Perkins was an unreliable witness and my conviction that the sale price was not inadequate would not be shaken.

Again Mr. Shearn submitted that the *onus* of proof that the price was not unreasonable was upon the defendants. On the authority of *Robins v. National Trust Company*[3], I find myself unable to accept this submission. In fairness to Mr. Shearn I must add that this submission was only made to support his contention that in the absence of a written judgment it could not be known if the trial Judge ever considered the point.

There remains one final point to be considered. This application originated as an application for liberty to appeal, and at a later stage, was amended to one to set aside the decree. At the hearing counsel for the respondents stated that he opposed the application to set aside the decree, but he would not oppose an application for liberty to appeal. At the appeal Mr. Shearn submitted that even if the decree was not set aside he should at least be granted liberty to appeal. Mr. Braddell and Mr. Walters both pointed out that if this course were adopted there would be no end to litigation. I agree and also I am doubtful if this Court has power to make such order in view of the form the appeal came to the Court. Furthermore, during the argument Mr. Shearn himself stressed the fact that without a written judgment and without grounds of judgment a Court of Appeal would labour under such a disadvantage as to be almost impotent. The learned Judge who heard the application was of the same view and took that as the main reason for setting aside the decree instead of granting leave to appeal. I agree also that, in the circumstances, to grant leave to appeal would in any case be a waste of time and money and would be asking the appellate tribunal to attempt the impossible.

I would accordingly allow this appeal and direct that the judgment of the lower Court be set aside and the application dismissed.

As the only party to these appeals who had an interest to sustain the order made in the Court below is Yau Wah Fong, he should, in my opinion, pay the costs of both appeals. Likewise in my opinion, he should pay the costs of the respondents in the Court below.

Certified for two counsel.

Murray-Aynsley, C. J. : — Both these appeals are from an order made by Mr. Justice Evans setting aside a judgment given in the Japanese Court during the occupation period. The orders appealed against were made under section 3 of the Japanese Judgments and Civil Proceedings Ordinance, 1946.

The transaction out of which these proceedings arose was as follows :—

In the early part of 1942 one Yau Wah Fong owned, inter alia, two pieces of rubber land in the

neighbourhood of Ipoh, viz. Grants for land Nos. 5715 and 12916 for Lots Nos. 21444 and 21624 in the Mukim of Ulu Kinta.

On May 29th, 1942, he entered into an agreement with nine persons who are the appellants in appeal No. 10 in the following terms :—

> 1. The Vendor shall execute a transfer of the said land on sale to the purchasers subject to the charge in favour of the Oversea Chinese Banking Corporation under a memorandum of Transfer in consideration of the sum mentioned therein.
>
> 2. The Vendor shall at his own costs and expenses have the said charge against the said land on sale discharged as soon as the Oversea Chinese Banking Corporation reopens its branches in Ipoh, and as a guarantee for good faith the Vendor has this day also transferred to the purchasers the piece of land held under Certificate of Title No. 12916 for Lot No. 21624 respectively in the District of Kinta in area about 100 acres.
>
> 3. The Purchasers agree that as soon as the charge against the said land on sale is discharged, the purchasers shall re-transfer to the Vendor the said land held under Certificate of Title No. 12916 for Lot No. 21624 in area about 100 acres at the expense of the Vendor.
>
> 4. In the event of the Vendor failing to have the said charge discharged two months after the re-opening of the said Bank in Ipoh the purchasers shall be at liberty to raise money by selling the said land held under Certificate of Title No. 12916 for Lot No. 21624 at a reasonable price and utilize the proceeds of sale to pay off the debt due to the said Bank under the said charge and pay the Vendor any balance out of the proceeds of sale after paying the said debt under the said charge in full but if the proceeds of sale is not sufficient to pay the said debt under the said charge then and in that case the purchasers shall be entitled to claim the deficiency from the Vendor.

Pursuant to that agreement the said Yau Wah Fong transferred the two pieces of land in question to the ten persons above referred to.

On June 13th, 1943, these ten persons entered into an agreement with one Khong Hoong who is now appellant in Appeal No. 9 for the sale of lot No. 21624 for $37,646 and some cents.

Yau Wah Fong was not satisfied and took proceedings in the Japanese Court. The pleadings form part of the record. It is not necessary to go into them in detail, but it is clear that Yau Wah Fong did not contend that the power of sale under clause 4 of the agreement had not arisen, that is, he did not deny that he had failed in his performance of clause 2 of the agreement, but contended that the sale was not for a reasonable price as provided for in clause 4.

Yau Wah Fong claimed in contract and also alleged fraud both against the ten and also against the proposed purchaser.

The case came on for hearing before Mr. Ismail Khan who had been appointed a Judge by the Japanese authorities and who, after a full hearing, found in favour of the defendants and dismissed the suit with costs. Yau Wah Fong tried to appeal but was not permitted by the Japanese authorities to do so.

In July of last year he took steps to obtain leave to appeal against that judgment, and there is no question but that he was entitled to such leave whatever his merits may have been. However, after his motion had been filed, he gave notice of an amendment by which, instead of seeking leave to appeal, he moved to have the judgment set aside. This the learned Judge did and from that decision the successful defendants in the Japanese Courts now appeal.

Counsel for the respondent contended that the discretion given under the Ordinance was an unfettered one and against the exercise of it no appeal would lie. With this contention I do not agree. While the section has been drafted in the widest terms and it is not possible to put a limit to the reasons for which a judgment of the kind in question should be set aside, it is equally clear that it would be contrary to the interests of justice if judgments should be set aside for no reason or for an obviously inadequate reason. On appeal from such an order the Court will therefore look into each case on its merits. Examination of the judgment of Mr. Justice Evans in the present case shows that though at the hearing of the motion other grounds were put forward, that learned Judge based his decision on one ground only, viz. the absence of written grounds of judgment of Mr. Ismail Khan.

By section 25 of the Courts Enactment (Cap. 2) it is provided that :—

> On the application of any party who is dissatisfied with any judgment or order within the time limited by Section 18 for appealing the Judge who has given or made the judgment or order shall certify in writing the grounds of such judgment or order; but delay in granting such certificate shall not prevent the appellant from proceeding with his appeal.

It will be seen by this that the burden of getting written grounds of judgment is placed on the appellant and until applied to by the appellant a Judge is under no obligation to furnish such grounds of judgment. It is true that in this case the dissatisfied party was not allowed to appeal and therefore may not have thought it worth while to ask, but in any case the blame, if any, attaches to him and to no one else. However this may be, I consider that it is desirable at this point to consider the record of the trial in order to ascertain whether in point of fact the absence of written grounds has caused any prejudice. This examination shows that the Judge kept a careful note

of evidence and arguments. The trial seems to have been well conducted and there is nothing that, on the face of it, suggests any irregularity. Further the evidence seems to have been directed to a single issue of fact: was the price reasonable? It seems to have been clear to every one that if in point of fact the price was reasonable the then plaintiff had no cause of action. On this point evidence was called on both sides. This was partly evidence of other transactions and partly evidence of valuers. The then plaintiff called a Mr. Perkins who gave a value of the 100 acres in question of $400 per acre. The defendants called a Mr. Pestana who had made a valuation of $375 per acre before the sale by the ten and was still of the same opinion. Taking all the evidence given at the trial no Judge could have come to any decision other than that the evidence showed that the price was a reasonable one. It does not appear therefore, that the plaintiff was prejudiced by the absence of written grounds of judgment and, therefore, in my opinion, the learned Judge was wrong in setting aside the judgment on that ground.

That being so, we must consider whether any of the other grounds advanced in support of the application would have justified the setting aside of the judgment.

Two grounds for setting aside seem to have been put forward. The most important seems to have been based on an affidavit by Mr. Perkins in which he states that he made a mistake in his evidence, having confused British and Japanese currencies. An attempt was made to corroborate this by means of affidavits of Mr. Chabra, who appeared for the plaintiff and of one Liew Ah Yam who was at that time clerk to Mr. Chabra. The latter said that he had taken a proof from Mr. Perkins in which the land was stated to be worth $700 per acre. It is significant that this proof was not produced or its absence accounted for. Even if the case of the *Gem Milling Co. v. Robinson*[4] has any value as an authority (seeing that when it was decided it was not greatly considered and that it only obtained a very sketchy report in one series of reports, I very much doubt if it has any) the present case seems not to be one in which, on the authority of that case, a new trial would be awarded, because even if one accepted Mr. Perkins's affidavit, the allegation would be in no way decisive, but would merely leave the Court in the position of having to decide between Messrs. Perkins and Pestana, and against the evidence of the latter no attack has been made. I think that no litigation could ever end if a new trial were to be given every time a witness failed to come up to his proof.

The other ground put forward was that it so happens the sale to Khong Hoong was never completed by transfer. This was explained in an affidavit by Mr. Yeoh Cheang Lee, who acted for Khong Hoong. The Court was invited to infer sinister machinations by the defendants from this failure to complete the transaction. It appears to me, however, that this and everything else advanced on behalf of Yau Wah Fong depends for its significance on whether in point of fact the land was sold at an under-value. Unless that is so Yau Wah Fong cannot have a case either in contract or any other ground. If there had been a sale at an under-value then many interesting questions would arise as to the possible liability of the ten and also of Khong Hoong. We have, however, a decision based on evidence on that issue and I can see no reason for disturbing that decision.

In my opinion the orders appealed against should be set aside and the appeals allowed with costs to be paid by Yau Wah Fong. He is the only party interested in maintaining the order appealed against in either case.

Russell, J. : — The ten appellants in this appeal No. 10 of 1947 together with respondent, Khong Hoong, who is also the appellant in Civil Appeal No. 9 of 1947, were the defendants in Civil Suit No. 63 of 2603 being sued therein by the remaining respondent one Yau Wah Fong for a declaration to set aside the sale of certain land. The Japanese Judge dismissed the claims of the applicant-respondent who on the 6th of February, 1947 commenced proceedings by way of motion before the Court of a Judge asking for leave to appeal against the decree of the Japanese court. After filing the motion the applicant-respondent gave notice to the appellants of an amendment by which he sought to have the decree set aside. That notice was accepted and the motion came before the learned Judge on that basis, the motion being made under section 3 of the Japanese Judgments and Civil Proceedings Ordinance 1946 on four grounds :—

1. That the Japanese Judge incorrectly recorded the issues or that he omitted all reference to collusion and fraud.
2. That there were no written grounds of judgment and that therefore it was difficult to know what the Japanese Judge really decided.
3. That the applicant-respondent's principal witness made a mistake in his evidence; and
4. That the appellants had failed to register their transfer to Khong Hoong and that this fresh evidence tended to prove fraud.

The learned Judge set aside the Japanese decree solely upon the second ground without going into the merits of the case heard by the Japanese Judge and from this decision the appellants appeal. Section 2 of the Civil Procedure Code defines judgment as meaning the statement given by the Judge of the grounds of a decree or order and section 216 states that the Court after a case has been heard shall pronounce judgment in open Court either at once or on some future day of which due notice shall be given. Section 25 of the Courts Ordinance states that on the application within a limited time of any party dissatisfied with a judgment the Judge who has given judgment shall certify in writing the grounds of his judgment. It is clear, therefore, that a judgment may be oral and the mere absence of a written judgment is not of itself a ground for any complaint. Mr. Shearn for the applicant-respondent argued that his client was prejudiced by the absence of a written judgment and that it was impossible to discover exactly what the Japanese judge really decided. Now Section 3 of the Japanese Judgments and Civil Proceedings Ordinance 1946 gives an appropriate Court power to set aside or grant liberty to appeal against a Japanese decree on the application of an aggrieved party to the proceedings. The appropriate court may, subject to the provisions of the section, make any order, as in the circumstances of the case may seem just. For this purpose it seems to me absolutely essential to consider the merits of the case upon which the Japanese decree was founded and it is not sufficient ground for setting aside a Japanese decree merely to show that the Judge did not give in writing any grounds for his decision and that therefore he might have decided the issues improperly.

As to the merits of the case the applicant-respondent based his claim first of all in contract contending that the appellants had committed a breach of contract in selling the land at a price which was not reasonable, the power to sell being admitted. The agreement itself was in writing and by clause 2 thereof the applicant-respondent contracted within a certain time, which it was admitted had expired, to pay off an existing charge upon another piece of land which he had at the same time transferred to the appellants. This the applicant-respondent did not do thereby he himself committing a breach of contract and it was therefore not open to him on the authority of *Tan Ah Boon v. The State of Johore*[5] to maintain the action on this ground as he was unable to aver and prove that he had performed or had at all times been ready to perform his part of the contract.

The applicant-respondent further contended that the appellants and Khong Hoong had been guilty of fraud and collusion in that no notice had been given to him of the intended sale, which was not made in good faith and that the price of the land sold was extremely inadequate. Notice was given to the applicant-respondent that the appellants intended to exercise their right of sale under the agreement and the only foundation for the suggestion of fraud was that the price was grossly inadequate thereby raising a presumption of fraud.

Looking at the evidence as to the value of this particular piece of land at the time it was sold including the evidence of the applicant-respondent's own expert in my opinion there was no evidence at all of a sale at a gross under-value such as to raise presumption of fraud and as to the alleged collusion, the applicant-respondent at the trial stated he had no quarrel at all with Khong Hoong.

The applicant-respondent's own expert now seeks to say in an affidavit that he made a mistake in his evidence at the trial and he attempted to support this affidavit by affidavits of Mr. Chabra who appeared for the applicant at the trial before the Japanese Judge and his clerk. The latter stated that the proof of the applicant-respondent's expert had valued the land at a sum greatly in excess of the figure he named at the trial, but this proof was never produced nor was its absence accounted for. One can only come to the conclusion that this expert was a most unreliable witness and that the Japanese Judge was correct in accepting the evidence of value put forward by the appellants. Further, the non-registration of the transfer in favour of Khong Hoong was explained by the affidavit of Mr. Yeoh Cheang Lee.

From the record it would appear that the case was carefully tried by the Japanese Judge, and I cannot see how he could have come to any other conclusion than the one at which he arrived. I would therefore allow this appeal. It follows therefore that I come to the same conclusion with regard to the appeal of Khong Hoong in Civil Appeal No. 9 of 1947 and I would also allow his appeal.

As Yau Wah Fong was the only person interested in upholding the order of the learned Judge setting aside the decision of the Japanese Judge, I am of the opinion that he ought to pay the costs of both appeals Nos. 9 and 10 of 1947 and the cost of the proceedings before the learned Judge.

Appeal Allowed.